

IN THE MATTER OF LICENSE NO. 65265
Issued to: James COPELAND

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1992

James COPELAND

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 12 October 1972, an Administrative Law Judge of the United States Coast Guard at Corpus Christi, Texas suspended Appellant's license for one month on two months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as operator on board the TX 4207 XH under authority of the license above captioned, on or about 19 August 1972, Appellant permitted said vessel to carry in excess of 6 passengers while said vessel did not have on board a valid Certificate of Inspection in violation of 46 U.S.C. 390 et seq. as specified in 46 CFR 176.01-(a).

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence some photographs of the vessel, a handwritten list of persons aboard and the testimony of three witnesses.

In defense, Appellant offered in evidence his own testimony. During proceedings on Appellant's motion to reopen, he introduced two checks and the testimony of one witness; and the investigating officer introduced the testimony of one witness.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending his license for a period of one month on two months' probation.

The entire decision was served on 16 October 1972. Appeal was timely filed on 6 November 1972.

FINDINGS OF FACT

On 19 August 1972, Appellant was serving as operator on board the TX 4207 XH and acting under authority of his license while the vessel was at sea.

The vessel, a 22 foot fiberglass boat with an outboard engine, did not have a Certificate of Inspection. Appellant operated this vessel on 19 August 1972 with a total of nine persons aboard. In addition to Appellant, there were three students undergoing diving instruction from Appellant, two divers who had paid for that particular trip, and three men whose purpose aboard was to supervise the activities of the other five. Of these last three men, one received the use of the necessary diving equipment for which Appellant would normally charge a rental fee. All three received free compressed air, the use of the boat and the services of Appellant, items for which he would normally exact fees.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge.

It is contended that only five of those aboard were "passengers" within the definition of 46 U.S.C. 390. Because of the disposition of this ground for appeal, it is unnecessary to discuss Appellant's other contentions.

APPEARANCE: Allison, Maddin, White & Brin, Corpus Christi, Texas.

OPINION

Exempted from "passenger" status under 46 U.S.C. 390(a) are "the master and the bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services."

The business of the vessel in this case was as part of the operation of a diving school. Three of the occupants of the boat, other than the owner, Appellant, were aboard for the furtherance of that business by way of supervising inexperienced divers. They gave no consideration for their carriage and were compensated by receipt of valuable services, air for diving and, in one case, the use of equipment for which they would have had to pay were it not

for their rendering of service to Appellant. That being the case they were members of the crew for purposes of the exception to the definition of "passenger." Therefore, Appellant was carrying only five "passengers" and was not in violation of 46 U.S.C. 390 et seq.

ORDER

The order of the Administrative Law Judge dated at Corpus Christi, Texas on 12 October 1972, is VACATED and the charge DISMISSED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 20th day of November 1973.

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Passengers

Distinguished from crew members

Certificate of inspection